

Voluntary Action South Lanarkshire Briefing:

Lobbying (Scotland) Act 2016

The Lobbying (Scotland) Act 2016 comes into force from Monday 12th March, 2018. The Act aims to increase public transparency about lobbying and defines particular types of communication as ‘regulated lobbying’.

From that date the Lobbying Register website (<https://www.lobbying.scot/>) must be used by anyone who engages in regulated lobbying to record details of their activities. Failure to do so can result in new criminal offences. The Register is also searchable by anyone with an interest in finding out about regulated lobbying activity that has taken place.

Regulated lobbying applies **only to oral communications**, face-to-face, this can be in person or by any form of video-conference (includes communications with British Sign Language) with:

- Members of the Scottish Parliament (MSPs)
- Members of the Scottish Government (including the Scottish Law Officers)
- Junior Scottish Ministers
- The Permanent Secretary of the Scottish Government
- Scottish Government Special Advisers

Lobbying does not apply to any other type of communication, such as emails, letters, tweets, phone calls etc.

In terms of the face-to-face communication, the Act does not limit where or when regulated lobbying takes place and could occur during a ‘chance’ meeting or at a personal or social event, indeed any situation where you come into contact and work-related issues are discussed.

Regulated lobbying applies only to discussions about Scottish Government or parliamentary functions.

The Act takes a broad view of what lobbying activity is. Any paid individual meeting with those included under the Act, and seeking to inform or influence decisions on behalf of their organisation (or those they represent) could be engaging in regulated lobbying, regardless of the occasion or informality of the situation.

Section 2 of the Act sets out what this means, but broadly it relates to discussions you have in relation to:

- Legislation to be made in the Scottish Parliament or any Scottish Government Policy
- Contracts, Grants and other financial assistance; license and other authorisations where the Scottish Government has a role
- Matters you have raised with an MSP (not covered by an exemption the Act) which they can take forward in that capacity, inside or outside the Scottish Parliament.

Not every conversation you have will be regulated lobbying. For example, promotional work during an event, helping at a media opportunity or indeed meeting an MSP or Minister and answering their questions during a visit to your workplace is not necessarily regulated lobbying. As no two discussions are the same, you and your organisation must make the judgement, keeping in mind that recording regulated lobbying is a legal requirement. (See 5 Steps in additional guidance below for clarification).

You should be aware, that if the person you had discussion with considered that they were 'lobbied' then they may well expect to see the instance recorded on the Lobbying Register.

There are a number of exemptions in the Act that may mean you will not need to enter details in the Lobbying Register. Scottish Parliament have produced guidance on the Act to help you to determine whether it applies to you.

However, the Act includes several **exemptions to regulated lobbying**. These include:

- Individuals raising issues on their own behalf
- Any individual, company/organisation living, based or operating within an MSP's constituency or region (this exemption does not apply to discussions with Scottish Ministers)
- Anyone who is unpaid (volunteers)
- Small companies/organisations (fewer than 10 full-time equivalent employees) unless they operate in a representative capacity
- During formal proceedings of the Scottish Parliament or where the communication is required under statute or another rule of law
- If an MSP (or their office) makes a request for factual information or views on a topic from an individual, company/organisation

- During quorate meetings of Cross-Party groups
- For the purposes of journalism
- About negotiations on terms and conditions of employment with either employers or trade unions
- With political parties and a number of public figures, bodies and professions.

However, there may be circumstances where these do not apply, significantly **exemption does not apply if your organisation is a representative body, that exists primarily to represent the interests of other people, so it is important that organisations fully check to ensure they are complying.** For more information see the Parliamentary Guidance below or you can contact the Lobbying Register Team on 0131 348 5408 or Email: lobbying@parliament.scot

Lobbying Register

The Lobbying Register is an **online, public and fully searchable register** available at www.lobbying.scot It is free to use and accessible to everyone, and organisations can set up an account with their registration details using a generic email and password of their choice.

Those engaged in regulated lobbying will use the Lobbying Register to provide information on **who** they have lobbied (i.e. MSPs, Ministers, etc.), **when** and **where** it happened and what the **purpose** of the lobbying was.

They will do this by submitting short **Information Returns**, for each instance of regulated lobbying to the Lobbying Register. An Information Return can be submitted at any time, but it is a legal requirement for you to register no later than 30 days after your first instance on regulated lobbying occurs. Registrants must update the Register at least every 6 months. If no lobbying has occurred during the 6 months, registrants must still provide a nil information return. Once registered the system will automatically issue a system reminder by email about the statutory requirement every six months.

The Act requires Parliament to review the operation of the Act, two years after the Lobbying Register comes into operation. This review will start in **early 2020**, led by a committee of the Scottish Parliament. This has already been agreed by the Parliamentary Bureau.

The requirement to register any activity lies with those who lobby, not with MSPs or their staff.

Code of Conduct for Persons Lobbying MSP's (Section 44 of the Act)

The Code sets out the key principles which any person lobbying a member of the Scottish Parliament should respect and adhere to the following ethical principles:

- You should act with honesty, integrity and respect
- You should not expect preferential access or treatment from that MSP
- You should make clear the identity of the person or organisation you are lobbying for and the motives and purpose of that lobbying
- You should not offer any payment or benefit in kind which would involve an MSP (or members of their staff) acting as paid advocates on your behalf.
- You should not knowingly provide information which is untrue, inaccurate or misleading.
- You should be fully aware of the Code of Conduct for MSP's which requires members to ensure that their staff adhere to the rules and guidelines of the Code, when acting on their behalf or in any parliamentary connection.

Offences

Provision regarding offences relating to registration and information returns is contained within Section 42 of the Act. A person who commits an offence under section 42 can be fined up to an £1000 (current amount).

Offences relating to Commissioner Investigations are contained in Section 36 of the Act. In this instance a person who commits an offence under section 36 can be sentenced to imprisonment for up to 3 months or fined £5000 (current amount).

Other Useful Guidance Information:

- [Parliamentary Guidance on Lobbying \(Jan 2018\)](#)
- [5 Key Steps](#)
- [Lobbying Register Guidance](#)
- [Frequently Asked Questions](#)
- [Common Scenarios](#)